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AMENDED IN SENATE JUNE 19, 2013

AMENDED IN ASSEMBLY MAY 24, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 420

Introduced by Assembly Member Dickinson

**(~~Coauthors:~~ Coauthors: Assembly Members Alejo, Ammiano,
Brown, John A. Pérez, and V. Manuel Pérez)**

(Coauthor: Senator Leno)

February 15, 2013

An act to amend ~~Sections 48900 and 48910~~ *Section 48900* of the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

AB 420, as amended, Dickinson. Pupil discipline: suspensions: willful defiance.

Existing law prohibits a pupil from being suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed a specified act, including, among other acts, disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties. *Existing law authorizes a teacher to suspend from his or her class a pupil in any grade level for those same acts.*

~~This bill would limit that authority of a superintendent of a school district and a principal regarding disruptive or similar pupil conduct by prohibiting a recommendation of expulsion for a pupil on those basis. It would limit eliminate the authority to suspend for disruptive or similar conduct to a pupil who is a pupil enrolled in any of grades 6 to 12, inclusive, who has substantially disrupted school activities or substantially prevented instruction from occurring, only on or after the 3rd offense in a school year, and only if the pupil's parent, guardian, or education rights holder has been informed that other specified correction measures were attempted before the recommendation to suspend. The bill also would state the intent of the Legislature to, among other things, address the disproportionate suspension of particular subgroups of pupils and encourage schools to instead prioritize and use alternative means of correction: kindergarten or any of grades 1 to 3, inclusive, and the authority to recommend for expulsion a pupil enrolled in kindergarten or any of grades 1 to 12, inclusive, for disrupting school activities or otherwise willfully defying the valid authority of those school personnel engaged in the performance of their duties. The bill would make the restrictions inoperative on July 1, 2018.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 48900 of the Education Code is amended
- 2 to read:
- 3 48900. A pupil shall not be suspended from school or
- 4 recommended for expulsion, unless the superintendent of the school
- 5 district or the principal of the school in which the pupil is enrolled
- 6 determines that the pupil has committed an act as defined pursuant
- 7 to any of subdivisions (a) to (r), inclusive:
- 8 (a) (1) Caused, attempted to cause, or threatened to cause
- 9 physical injury to another person.
- 10 (2) Willfully used force or violence upon the person of another,
- 11 except in self-defense.
- 12 (b) Possessed, sold, or otherwise furnished a firearm, knife,
- 13 explosive, or other dangerous object, unless, in the case of
- 14 possession of an object of this type, the pupil had obtained written
- 15 permission to possess the item from a certificated school employee,

1 which is concurred in by the principal or the designee of the
2 principal.

3 (c) Unlawfully possessed, used, sold, or otherwise furnished,
4 or been under the influence of, a controlled substance listed in
5 Chapter 2 (commencing with Section 11053) of Division 10 of the
6 Health and Safety Code, an alcoholic beverage, or an intoxicant
7 of any kind.

8 (d) Unlawfully offered, arranged, or negotiated to sell a
9 controlled substance listed in Chapter 2 (commencing with Section
10 11053) of Division 10 of the Health and Safety Code, an alcoholic
11 beverage, or an intoxicant of any kind, and either sold, delivered,
12 or otherwise furnished to a person another liquid, substance, or
13 material and represented the liquid, substance, or material as a
14 controlled substance, alcoholic beverage, or intoxicant.

15 (e) Committed or attempted to commit robbery or extortion.

16 (f) Caused or attempted to cause damage to school property or
17 private property.

18 (g) Stole or attempted to steal school property or private
19 property.

20 (h) Possessed or used tobacco, or products containing tobacco
21 or nicotine products, including, but not limited to, cigarettes, cigars,
22 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew
23 packets, and betel. However, this section does not prohibit use or
24 possession by a pupil of his or her own prescription products.

25 (i) Committed an obscene act or engaged in habitual profanity
26 or vulgarity.

27 (j) Unlawfully possessed or unlawfully offered, arranged, or
28 negotiated to sell drug paraphernalia, as defined in Section 11014.5
29 of the Health and Safety Code.

30 (k) (1) Disrupted school activities or otherwise willfully defied
31 the valid authority of supervisors, teachers, administrators, school
32 officials, or other school personnel engaged in the performance of
33 their duties.

34 (2) *Notwithstanding any other law, a pupil enrolled in*
35 *kindergarten or any of grades 1 to 3, inclusive, shall not be*
36 *suspended for any of the acts enumerated in this subdivision, and*
37 *this subdivision shall not constitute grounds for a pupil enrolled*
38 *in kindergarten or any of grades 1 to 12, inclusive, to be*
39 *recommended for expulsion. This paragraph shall become*
40 *inoperative on July 1, 2018, unless a later enacted statute that*

1 *becomes operative before July 1, 2018, deletes or extends that*
2 *date.*

3 (l) Knowingly received stolen school property or private
4 property.

5 (m) Possessed an imitation firearm. As used in this section,
6 “imitation firearm” means a replica of a firearm that is so
7 substantially similar in physical properties to an existing firearm
8 as to lead a reasonable person to conclude that the replica is a
9 firearm.

10 (n) Committed or attempted to commit a sexual assault as
11 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal
12 Code or committed a sexual battery as defined in Section 243.4
13 of the Penal Code.

14 (o) Harassed, threatened, or intimidated a pupil who is a
15 complaining witness or a witness in a school disciplinary
16 proceeding for purposes of either preventing that pupil from being
17 a witness or retaliating against that pupil for being a witness, or
18 both.

19 (p) Unlawfully offered, arranged to sell, negotiated to sell, or
20 sold the prescription drug Soma.

21 (q) Engaged in, or attempted to engage in, hazing. For purposes
22 of this subdivision, “hazing” means a method of initiation or
23 preinitiation into a pupil organization or body, whether or not the
24 organization or body is officially recognized by an educational
25 institution, which is likely to cause serious bodily injury or personal
26 degradation or disgrace resulting in physical or mental harm to a
27 former, current, or prospective pupil. For purposes of this
28 subdivision, “hazing” does not include athletic events or
29 school-sanctioned events.

30 (r) Engaged in an act of bullying. For purposes of this
31 subdivision, the following terms have the following meanings:

32 (1) “Bullying” means any severe or pervasive physical or verbal
33 act or conduct, including communications made in writing or by
34 means of an electronic act, and including one or more acts
35 committed by a pupil or group of pupils as defined in Section
36 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
37 that has or can be reasonably predicted to have the effect of one
38 or more of the following:

39 (A) Placing a reasonable pupil or pupils in fear of harm to that
40 pupil’s or those pupils’ person or property.

1 (B) Causing a reasonable pupil to experience a substantially
2 detrimental effect on his or her physical or mental health.

3 (C) Causing a reasonable pupil to experience substantial
4 interference with his or her academic performance.

5 (D) Causing a reasonable pupil to experience substantial
6 interference with his or her ability to participate in or benefit from
7 the services, activities, or privileges provided by a school.

8 (2) (A) “Electronic act” means the creation and transmission
9 originated on or off the schoolsite, by means of an electronic
10 device, including, but not limited to, a telephone, wireless
11 telephone, or other wireless communication device, computer, or
12 pager, of a communication, including, but not limited to, any of
13 the following:

14 (i) A message, text, sound, or image.

15 (ii) A post on a social network Internet Web site, including, but
16 not limited to:

17 (I) Posting to or creating a burn page. “Burn page” means an
18 Internet Web site created for the purpose of having one or more
19 of the effects listed in paragraph (1).

20 (II) Creating a credible impersonation of another actual pupil
21 for the purpose of having one or more of the effects listed in
22 paragraph (1). “Credible impersonation” means to knowingly and
23 without consent impersonate a pupil for the purpose of bullying
24 the pupil and such that another pupil would reasonably believe, or
25 has reasonably believed, that the pupil was or is the pupil who was
26 impersonated.

27 (III) Creating a false profile for the purpose of having one or
28 more of the effects listed in paragraph (1). “False profile” means
29 a profile of a fictitious pupil or a profile using the likeness or
30 attributes of an actual pupil other than the pupil who created the
31 false profile.

32 (B) Notwithstanding paragraph (1) and subparagraph (A), an
33 electronic act shall not constitute pervasive conduct solely on the
34 basis that it has been transmitted on the Internet or is currently
35 posted on the Internet.

36 (3) “Reasonable pupil” means a pupil, including, but not limited
37 to, an exceptional needs pupil, who exercises average care, skill,
38 and judgment in conduct for a person of his or her age, or for a
39 person of his or her age with his or her exceptional needs.

(s) A pupil shall not be suspended or expelled for any of the acts enumerated in this section unless the act is related to a school activity or school attendance occurring within a school under the jurisdiction of the superintendent of the school district or principal or occurring within any other school district. A pupil may be suspended or expelled for acts that are enumerated in this section and related to a school activity or school attendance that occur at any time, including, but not limited to, any of the following:

- (1) While on school grounds.
- (2) While going to or coming from school.
- (3) During the lunch period whether on or off the campus.
- (4) During, or while going to or coming from, a school-sponsored activity.

(t) A pupil who aids or abets, as defined in Section 31 of the Penal Code, the infliction or attempted infliction of physical injury to another person may be subject to suspension, but not expulsion, pursuant to this section, except that a pupil who has been adjudged by a juvenile court to have committed, as an aider and abettor, a crime of physical violence in which the victim suffered great bodily injury or serious bodily injury shall be subject to discipline pursuant to subdivision (a).

(u) As used in this section, “school property” includes, but is not limited to, electronic files and databases.

(v) For a pupil subject to discipline under this section, a superintendent of the school district or principal may use his or her discretion to provide alternatives to suspension or expulsion that are age appropriate and designed to address and correct the pupil’s specific misbehavior as specified in Section 48900.5.

(w) It is the intent of the Legislature that alternatives to suspension or expulsion be imposed against a pupil who is truant, tardy, or otherwise absent from school activities.

~~SECTION 1. Section 48900 of the Education Code is amended to read:~~

~~48900. A pupil shall not be suspended from school or recommended for expulsion, unless the superintendent of the school district or the principal of the school in which the pupil is enrolled determines that the pupil has committed an act as defined pursuant to any of subdivisions (a) to (r), inclusive:~~

~~(a) (1) Caused, attempted to cause, or threatened to cause physical injury to another person.~~

1 ~~(2) Willfully used force or violence upon the person of another,~~
2 ~~except in self-defense.~~

3 ~~(b) Possessed, sold, or otherwise furnished a firearm, knife,~~
4 ~~explosive, or other dangerous object, unless, in the case of~~
5 ~~possession of an object of this type, the pupil had obtained written~~
6 ~~permission to possess the item from a certificated school employee,~~
7 ~~which is concurred in by the principal or the designee of the~~
8 ~~principal.~~

9 ~~(c) Unlawfully possessed, used, sold, or otherwise furnished,~~
10 ~~or been under the influence of, a controlled substance listed in~~
11 ~~Chapter 2 (commencing with Section 11053) of Division 10 of the~~
12 ~~Health and Safety Code, an alcoholic beverage, or an intoxicant~~
13 ~~of any kind.~~

14 ~~(d) Unlawfully offered, arranged, or negotiated to sell a~~
15 ~~controlled substance listed in Chapter 2 (commencing with Section~~
16 ~~11053) of Division 10 of the Health and Safety Code, an alcoholic~~
17 ~~beverage, or an intoxicant of any kind, and either sold, delivered,~~
18 ~~or otherwise furnished to a person another liquid, substance, or~~
19 ~~material and represented the liquid, substance, or material as a~~
20 ~~controlled substance, alcoholic beverage, or intoxicant.~~

21 ~~(e) Committed or attempted to commit robbery or extortion.~~

22 ~~(f) Caused or attempted to cause damage to school property or~~
23 ~~private property.~~

24 ~~(g) Stole or attempted to steal school property or private~~
25 ~~property.~~

26 ~~(h) Possessed or used tobacco, or products containing tobacco~~
27 ~~or nicotine products, including, but not limited to, cigarettes, cigars,~~
28 ~~miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew~~
29 ~~packets, and betel. However, this section does not prohibit use or~~
30 ~~possession by a pupil of his or her own prescription products.~~

31 ~~(i) Committed an obscene act or engaged in habitual profanity~~
32 ~~or vulgarity.~~

33 ~~(j) Unlawfully possessed or unlawfully offered, arranged, or~~
34 ~~negotiated to sell drug paraphernalia, as defined in Section 11014.5~~
35 ~~of the Health and Safety Code.~~

36 ~~(k) (1) A pupil enrolled in any of grades 6 to 12, inclusive, who~~
37 ~~has substantially disrupted school activities or substantially~~
38 ~~prevented instruction from occurring.~~

39 ~~(2) A pupil may only be suspended from school pursuant to this~~
40 ~~subdivision on or after the third offense in a school year, and only~~

1 if the pupil's parent, guardian, or education rights holder has been
2 informed that other means of correction, pursuant to Section
3 48900.5, were attempted before the recommendation to suspend.
4 Pursuant to Section 48900.5, a school district may document other
5 means of correction but is not required to do so.

6 ~~(3) Notwithstanding any other law, this subdivision shall not~~
7 ~~constitute grounds for a pupil to be recommended for expulsion.~~

8 ~~(4) It is the intent of the Legislature to address the~~
9 ~~disproportionate suspension of particular subgroups of pupils, to~~
10 ~~minimize the excessive use of this subdivision as a reason to~~
11 ~~impose in-school and off-campus removals that often lead to poor~~
12 ~~educational outcomes, and to encourage schools to instead~~
13 ~~prioritize and use alternative means of correction such as~~
14 ~~participation in a restorative justice program, a positive behavior~~
15 ~~support system with tiered interventions, or other forms of~~
16 ~~correction as specified in Section 48900.5, in order to improve~~
17 ~~educational outcomes for children.~~

18 ~~(l) Knowingly received stolen school property or private~~
19 ~~property.~~

20 ~~(m) Possessed an imitation firearm. As used in this section,~~
21 ~~“imitation firearm” means a replica of a firearm that is so~~
22 ~~substantially similar in physical properties to an existing firearm~~
23 ~~as to lead a reasonable person to conclude that the replica is a~~
24 ~~firearm.~~

25 ~~(n) Committed or attempted to commit a sexual assault as~~
26 ~~defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal~~
27 ~~Code or committed a sexual battery as defined in Section 243.4~~
28 ~~of the Penal Code.~~

29 ~~(o) Harassed, threatened, or intimidated a pupil who is a~~
30 ~~complaining witness or a witness in a school disciplinary~~
31 ~~proceeding for purposes of either preventing that pupil from being~~
32 ~~a witness or retaliating against that pupil for being a witness, or~~
33 ~~both.~~

34 ~~(p) Unlawfully offered, arranged to sell, negotiated to sell, or~~
35 ~~sold the prescription drug Soma.~~

36 ~~(q) Engaged in, or attempted to engage in, hazing. For purposes~~
37 ~~of this subdivision, “hazing” means a method of initiation or~~
38 ~~preinitiation into a pupil organization or body, whether or not the~~
39 ~~organization or body is officially recognized by an educational~~
40 ~~institution, which is likely to cause serious bodily injury or personal~~

1 degradation or disgrace resulting in physical or mental harm to a
2 former, current, or prospective pupil. For purposes of this
3 subdivision, “hazing” does not include athletic events or
4 school-sanctioned events.

5 (r) Engaged in an act of bullying. For purposes of this
6 subdivision, the following terms have the following meanings:

7 (1) “Bullying” means any severe or pervasive physical or verbal
8 act or conduct, including communications made in writing or by
9 means of an electronic act, and including one or more acts
10 committed by a pupil or group of pupils as defined in Section
11 48900.2, 48900.3, or 48900.4, directed toward one or more pupils
12 that has or can be reasonably predicted to have the effect of one
13 or more of the following:

14 (A) Placing a reasonable pupil or pupils in fear of harm to that
15 pupil’s or those pupils’ person or property.

16 (B) Causing a reasonable pupil to experience a substantially
17 detrimental effect on his or her physical or mental health.

18 (C) Causing a reasonable pupil to experience substantial
19 interference with his or her academic performance.

20 (D) Causing a reasonable pupil to experience substantial
21 interference with his or her ability to participate in or benefit from
22 the services, activities, or privileges provided by a school.

23 (2) (A) “Electronic act” means the transmission, by means of
24 an electronic device, including, but not limited to, a telephone,
25 wireless telephone, or other wireless communication device,
26 computer, or pager, of a communication, including, but not limited
27 to, any of the following:

28 (i) A message, text, sound, or image.

29 (ii) A post on a social network Internet Web site including, but
30 not limited to:

31 (I) Posting to or creating a burn page. “Burn page” means an
32 Internet Web site created for the purpose of having one or more
33 of the effects listed in paragraph (1).

34 (II) Creating a credible impersonation of another actual pupil
35 for the purpose of having one or more of the effects listed in
36 paragraph (1). “Credible impersonation” means to knowingly and
37 without consent impersonate a pupil for the purpose of bullying
38 the pupil and such that another pupil would reasonably believe, or
39 has reasonably believed, that the pupil was or is the pupil who was
40 impersonated.

1 ~~(III) Creating a false profile for the purpose of having one or~~
2 ~~more of the effects listed in paragraph (1). “False profile” means~~
3 ~~a profile of a fictitious pupil or a profile using the likeness or~~
4 ~~attributes of an actual pupil other than the pupil who created the~~
5 ~~false profile.~~

6 ~~(B) Notwithstanding paragraph (1) and subparagraph (A), an~~
7 ~~electronic act shall not constitute pervasive conduct solely on the~~
8 ~~basis that it has been transmitted on the Internet or is currently~~
9 ~~posted on the Internet.~~

10 ~~(3) “Reasonable pupil” means a pupil, including, but not limited~~
11 ~~to, an exceptional needs pupil, who exercises average care, skill,~~
12 ~~and judgment in conduct for a person of his or her age, or for a~~
13 ~~person of his or her age with his or her exceptional needs.~~

14 ~~(s) A pupil shall not be suspended or expelled for any of the~~
15 ~~acts enumerated in this section unless the act is related to a school~~
16 ~~activity or school attendance occurring within a school under the~~
17 ~~jurisdiction of the superintendent of the school district or principal~~
18 ~~or occurring within any other school district. A pupil may be~~
19 ~~suspended or expelled for acts that are enumerated in this section~~
20 ~~and related to a school activity or school attendance that occur at~~
21 ~~any time, including, but not limited to, any of the following:~~

22 ~~(1) While on school grounds.~~

23 ~~(2) While going to or coming from school.~~

24 ~~(3) During the lunch period whether on or off the campus.~~

25 ~~(4) During, or while going to or coming from, a~~
26 ~~school-sponsored activity.~~

27 ~~(t) A pupil who aids or abets, as defined in Section 31 of the~~
28 ~~Penal Code, the infliction or attempted infliction of physical injury~~
29 ~~to another person may be subject to suspension, but not expulsion,~~
30 ~~pursuant to this section, except that a pupil who has been adjudged~~
31 ~~by a juvenile court to have committed, as an aider and abettor, a~~
32 ~~crime of physical violence in which the victim suffered great bodily~~
33 ~~injury or serious bodily injury shall be subject to discipline pursuant~~
34 ~~to subdivision (a).~~

35 ~~(u) As used in this section, “school property” includes, but is~~
36 ~~not limited to, electronic files and databases.~~

37 ~~(v) For a pupil subject to discipline under this section, a~~
38 ~~superintendent of the school district or principal may use his or~~
39 ~~her discretion to provide alternatives to suspension or expulsion~~

1 ~~that are age appropriate and designed to address and correct the~~
2 ~~pupil's specific misbehavior as specified in Section 48900.5.~~

3 ~~(w) It is the intent of the Legislature that alternatives to~~
4 ~~suspension or expulsion be imposed against a pupil who is truant,~~
5 ~~tardy, or otherwise absent from school activities.~~

6 ~~SEC. 2. Section 48910 of the Education Code is amended to~~
7 ~~read:~~

8 ~~48910. (a) A teacher may suspend any pupil from class, for~~
9 ~~any of the acts enumerated in Section 48900, for the day of the~~
10 ~~suspension and the day following. The teacher shall immediately~~
11 ~~report the suspension to the principal of the school and send the~~
12 ~~pupil to the principal or the designee of the principal for appropriate~~
13 ~~action. If that action requires the continued presence of the pupil~~
14 ~~at the schoolsite, the pupil shall be under appropriate supervision,~~
15 ~~as defined in policies and related regulations adopted by the~~
16 ~~governing board of the school district. As soon as possible, the~~
17 ~~teacher shall ask the parent or guardian of the pupil to attend a~~
18 ~~parent-teacher conference regarding the suspension. If practicable,~~
19 ~~a school counselor or a school psychologist may attend the~~
20 ~~conference. A school administrator shall attend the conference if~~
21 ~~the teacher or the parent or guardian so requests. The pupil shall~~
22 ~~not be returned to the class from which he or she was suspended,~~
23 ~~during the period of the suspension, without the concurrence of~~
24 ~~the teacher of the class and the principal.~~

25 ~~(b) A pupil suspended from a class shall not be placed in another~~
26 ~~regular class during the period of suspension. However, if the pupil~~
27 ~~is assigned to more than one class per day this subdivision shall~~
28 ~~apply only to other regular classes scheduled at the same time as~~
29 ~~the class from which the pupil was suspended.~~

30 ~~(c) A teacher may also refer a pupil, for any of the acts~~
31 ~~enumerated in Section 48900, to the principal or the designee of~~
32 ~~the principal for consideration of a suspension from the school.~~

33 ~~(d) Notwithstanding subdivision (k) of Section 48900, a teacher~~
34 ~~may suspend a pupil in any grade level from class, including for~~
35 ~~a first offense and from a one-room schoolhouse, for disrupting~~
36 ~~school activities or otherwise willfully defying the valid authority~~
37 ~~of supervisors, teachers, administrators, school officials, or other~~
38 ~~school personnel engaged in the performance of their duties.~~